

Maine Revised Statutes
Title 35-A: PUBLIC UTILITIES
Chapter 32: ELECTRIC INDUSTRY RESTRUCTURING

§3204. DIVESTITURE OF GENERATION

1. Divestiture required; exceptions. Except as provided in subsection 3, on or before March 1, 2000, each investor-owned electric utility shall divest all generation assets and generation-related business activities other than any:

- A. Contract with a qualifying facility, contract with a party other than a qualifying facility or affiliated interest entered into solely for the purpose of restructuring a contract with a qualifying facility or contract with a demand-side management or conservation provider, broker or host; [1997, c. 558, §1 (AMD) .]
- B. Ownership interest in a nuclear power plant; [1997, c. 316, §3 (NEW) .]
- C. Ownership interest in a facility located outside the United States; or [1997, c. 316, §3 (NEW) .]
- D. Ownership interest in a generation asset that the commission determines is necessary for the utility to perform its obligations as a transmission and distribution utility in an efficient manner. [1997, c. 316, §3 (NEW) .]

No later than January 1, 1999, each investor-owned electric utility shall submit to the commission a plan to accomplish the divestiture required under this subsection. In an adjudicatory proceeding, the commission shall review the plans for consistency with this chapter. By July 1, 1999, the commission shall issue an order approving the plan or modifying the plan to make it consistent with the requirements of this chapter. An investor-owned electric utility shall divest its generation assets in accordance with the commission's order.

[1997, c. 558, §1 (AMD) .]

2. Commission may require divestiture of Maine Yankee interests. Notwithstanding any other provision of this chapter, the commission, if necessary to achieve the purposes of this chapter, may, in an adjudicatory proceeding, require any investor-owned transmission and distribution utility to divest its ownership interests in the Maine Yankee Atomic Power Company on or after January 1, 2009. The commission may order divestiture under this subsection only after notice to all interested parties and an opportunity for those parties to be heard.

[1997, c. 316, §3 (NEW) .]

3. Extension; separation required. An investor-owned electric utility may apply to the commission for an extension to permit the utility to divest one or more generation assets or generation-related business activities after March 1, 2000. The commission shall grant an extension if the commission finds that an extension would be likely to improve the sale value of those assets on the market or would be likely to reduce the level of the utility's stranded costs.

The commission by rule shall establish the procedure for granting extensions. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

[1999, c. 577, §1 (AMD) .]

4. Sale of capacity and energy required. The commission by rule shall require each investor-owned electric utility after February 28, 2000 to sell rights to capacity and energy from all generation assets and generation-related business, including purchased power contracts that are not divested pursuant to subsection 1, except those rights to capacity and energy that the commission determines are necessary for the utility to perform its obligations as a transmission and distribution utility in an efficient manner.

In the rules adopted under this subsection, the commission shall establish procedures to promote the maximum market value for these rights. Nothing in this subsection prohibits a utility from re-negotiating, buying out or buying down a contract with a qualifying facility in accordance with applicable laws. The commission shall adopt all rules required under this subsection. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

[1999, c. 577, §2 (AMD) .]

5. Ownership of generation prohibited. Except as otherwise permitted under this chapter, on or after March 1, 2000, an investor-owned transmission and distribution utility may not own, have a financial interest in or otherwise control generation or generation-related assets.

[1997, c. 316, §3 (NEW) .]

6. Generation assets permitted. On or after March 1, 2000, notwithstanding any other provision in this chapter, the commission may allow an investor-owned transmission and distribution utility to own, have a financial interest in or otherwise control generation and generation-related assets to the extent that the commission finds that ownership, interest or control is necessary for the utility to perform its obligations as a transmission and distribution utility in an efficient manner.

[1997, c. 316, §3 (NEW) .]

7. Corporate law; exemptions. An order of the commission directing or approving divestiture renders an electric utility and its directors, officers and shareholders exempt from Title 13-C, section 651 and from the Uniform Fraudulent Transfer Act, Title 14, chapter 504 for the matters addressed by the order. A divestiture pursuant to a commission order directing or approving the divestiture is not subject to limitations contained in the corporation's articles of incorporation and, notwithstanding Title 13-C, chapter 12, does not require shareholder approval.

[2003, c. 344, Pt. D, §24 (AMD) .]

8. Authority to transfer title. Except as otherwise expressly provided by law, a law of this State enacted prior to September 1, 1997, including any private and special law, that grants generation-asset-related rights, privileges or immunities to an investor-owned electric utility is deemed to grant authorization to the investor-owned electric utility to convey or otherwise transfer those rights, privileges or immunities in accordance with this section only if:

A. The investor-owned utility provides to the commission a copy of the law granting the rights, privileges or immunities and a description of the proposed transfer; and [1997, c. 710, §9 (NEW) .]

B. The commission makes a written finding that the law grants rights, privileges or immunities that are generation assets required to be divested under this section or that are necessary to the ownership or operation of generation assets required to be divested under this section. [1997, c. 710, §9 (NEW) .]

Upon the issuance of a written finding by the commission under paragraph B, an electric utility is authorized to transfer those generation-asset-related rights, privileges and immunities identified in the written finding of the commission, provided that the electric utility complies with all other applicable requirements of law, including section 1101. The commission may issue a written finding under paragraph B in an order approving a divestiture of generation assets, pursuant to section 1101.

For purposes of this subsection, "generation-asset-related rights, privileges or immunities" means rights, privileges or immunities that constitute generation assets or that are necessary to the ownership or operation of generation assets, including water rights associated with hydro-electric facilities. For purposes of this subsection, the term "investor-owned electric utility" includes an affiliate of an investor-owned electric utility to the extent that the affiliate is transferring an asset that the affiliate is required to divest pursuant to this section.

Nothing in this subsection may be interpreted to permit the transfer of any rights, privileges or immunities that by law are expressly nontransferable or that are transferable only on condition, unless the condition is met. Nothing in this subsection may be interpreted as extinguishing or affecting any lawful rights, privileges or immunities that any person or entity or the public may have in any property held or transferred by an electric utility. Nothing in this section authorizes the sale or transfer of any right of eminent domain. Any right of eminent domain held by an investor-owned electric utility in relation to generation-asset-related rights, privileges or immunities terminates upon the divestiture of the generation-asset-related rights, privileges or immunities.

[1997, c. 710, §9 (NEW) .]

9. Other regulatory approvals; limitation. A transfer of interests or rights in real property necessary to consummate a divestiture pursuant to this section that results in a division of ownership of any lot or parcel of real property:

A. Is exempt from municipal and state agency approval required pursuant to laws, ordinances or rules related to land use, zoning, shoreland zoning or subdivision of property; and [1999, c. 43, §1 (NEW) .]

B. Does not constitute a violation of laws, ordinances or rules relating to land use, zoning, shoreland zoning or subdivision of property. [1999, c. 43, §1 (NEW) .]

Any subsequent regulated activity relating to any resulting parcel is subject to all applicable regulatory reviews and approvals by a municipality or state agency. A municipality or state agency, in its review of any subsequent regulated activity relating to any resulting parcel, may consider the division of ownership accomplished pursuant to the exemption granted under this subsection and may, in accordance with applicable standards established by law, rule or ordinance, deny or condition its approval based on the cumulative effect of that division of ownership and the subsequent regulated activity, as though both were occurring at the same time.

For purposes of this subsection, "subsequent regulated activity" means any activity occurring after a division of ownership accomplished pursuant to the exemption granted under this subsection that is subject to regulatory review by a municipality or state agency, including any change of use, division of ownership or development. For purposes of this subsection, "resulting parcel" means a lot or parcel of real property resulting from a division of ownership accomplished pursuant to an exemption granted under this subsection.

[1999, c. 43, §1 (NEW) .]

10. Retail contracts for bundled electricity service extending beyond March 1, 2000. If a transmission and distribution utility has entered into a contract to provide bundled electricity service to a retail customer at a price other than the applicable tariffed rate for a term extending beyond March 1, 2000, the utility shall attempt to renegotiate and reform the contract to preserve as nearly as possible the parties' benefits and burdens under the terms of the contract, except that an investor-owned transmission and distribution utility may not agree to provide directly or indirectly generation service to the customer on or after March 1, 2000.

The utility shall reform the contract so that the customer pays a total price for delivered electricity on an annual basis during the remaining term of the contract equal to the price contained in the contract. If the customer has exercised due diligence to obtain the lowest price from a competitive electricity provider for generation service for the remaining term of the contract, the utility shall reform the contract to provide a price for transmission and distribution services, stranded costs and all other applicable utility charges that is

equal to the difference between the original contract price and the price for generation service obtained by the customer. If the customer has failed to exercise due diligence, the price must be equal to the difference between the original contract price and a reasonable market price for generation service for that customer.

If after good faith negotiations the contracting parties are unable to agree to a reformed contract, either party may petition the commission to resolve the dispute. The commission shall determine any unresolved issues and impose a reformed contract to preserve as nearly as possible the parties' benefits and burdens under the terms of the original contract. Prior to its final determination, the commission shall review updated information provided by the retail customer concerning the price of its generation service. The commission may not approve a retail contract with a price term longer than the expected duration of the retail customer's generation service contract. Changes to a contract reformed under this subsection take effect on March 1, 2000. A transmission and distribution utility shall ensure that any contract subject to this subsection has been reformed before that date.

[1999, c. 398, Pt. K, §1 (NEW) .]

SECTION HISTORY

1997, c. 316, §3 (NEW). 1997, c. 558, §1 (AMD). 1997, c. 710, §9 (AMD). 1999, c. 43, §1 (AMD). 1999, c. 398, §§K1,N1 (AMD). 1999, c. 577, §§1,2 (AMD). 2003, c. 344, §D24 (AMD).

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